IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 542 OF 2007

Janak Healthcare Pvt. Ltd., & Ors. .. Petitioners.

vs.

Municipal Corporation of Gr. Bombay

& Ors. .. Respondents.

Mr. Chirag Balsara i/by Rajani & Asso.

for petitioners.

Mr. K.K. Singhavi with Ms. P.A. Purandare

for Respondent nos. 1 & 2.

Mr. Shyam Dewani i/by P.D. Shah for R. No. 3.

Ms. A.B. Shah for Respondent no. 4.

Mr. Vaibhav Bagade for Respondent No.5.

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Coram: J.N. PATEL, ACTING C.J. &

S.C. DHARMADHIKARI, J.

Date: 22nd March, 2007.

ORAL JUDGMENT (Per J.N. Patel, Acting C. J.) :

. Heard the learned counsel for the parties. The learned counsel for the respondents waives service and submit that their affidavits in reply be treated as their returns filed at the stage of admission.

2. Rule. Rule made returnable forthwith by consent of parties.

3. The petitioners have taken an exception for rejection of their technical bid that the respondent no. 1 found to be non-responsive on their not having signed the tender documents and has sought intervention of this Court in its writ jurisdiction to quash and set aside the said decision and consider the petitioners offer/bid for supply of hospital equipments and other ancillary reliefs sought by them.

4. It is the case of the petitioners that they are engaged in the business of manufacturing and supplying hospital furniture to various renowned hospitals in India and are exporting the same abroad since 1951 and are also having ISO certifications in respect of its products and having turnover of approximately 30 crores per annum.

5. It is the case of the petitioners that in the past deficiencies such as non furnishing of sales tax registration certificate (one of the mandatory requirements) have been pointed out and the same has been rectified by them and no municipal hospital has rejected the petitioners tender on the ground of deficiency in tender form.

6. It is the case of the petitioners that respondent no. 1 herein, through the Central Stores Department floated a tender for the supply of furniture at Nair Hospital, vide their tender notice No. CS/OD/ADVT/5/EXP dated 5th October, 2006.

7. It is the case of the petitioners that pursuant to the above, the petitioners deposited earnest money deposit on 16th October, 2006 and on next day i.e. on 17th October, 2006 submitted their tender offer. The said tender offer and booklet containing instructions and articles of agreement was signed by Vice President Sales and Marketing of Petitioner No. 1, on all pages including page no. 10. Page No. 11 was also signed along with three out of four directors of Petitioner No. 1. Since one of the directors was not well, he could not sign the said page no. 11.

8. It is the case of the petitioners that the said tender was complete in all respects and they have enclosed all samples as required under special directives of tenders. All except for the fact that name of Petitioner No. 1 not being filled in column on page No. 10, the offer was complete in all respects, except for the said deficiency which has taken place due to human error in view of past practice of only signing of tender offer.

9. It is the case of the petitioner that

respondent no. 1 held a meeting of tenderers on 17th October, 2006 and the same has been attended by Petitioner No. 2, in which he has not been informed about any deficiency in the tender submitted by them and the same has been admitted by Respondent No. 1 at the hearing held on 21st February, 2007.

10. It is the case of the petitioners that there were eight tenderers for aforesaid tender and the Petitioner No. 1 was the only manufacturer participating in it and remaining were traders.

11. It is the case of the petitioners that on 14th February, 2007 they came to know about the standing committee meeting dated 14th February 2007 in which they did not consider the bid of the petitioners and informed that the same was not responsive. Therefore, on the same day petitioner addressed a letter to Chairman of the Standing Committee and requested him to keep on hold its approval to subject tender. According to the petitioner at no point of time prior to 14th February 2007, the petitioners were aware of the aforesaid minor deficiency in the tender and only on 14th February, 2007 they came to know about the same.

12. It is the case of the petitioners that the Respondent No. 1 is seeking to award the said contract to Respondent Nos. 3, 4 and 5 despite the Petitioner No. 1 being the lowest tenderer in respect of 28 out

of 31 items quoted by them out of total items required by Respondent No. 1. The petitioners say that the price difference between the said 28 items as quoted by other tenderers is Rs. 1,61,96,456/- i.e. 24.63% between the petitioners offer and recommended price at which the contract is sought to be awarded by the respondent no. 1. It is the further case of the petitioners that the aforesaid action on the part of the respondent no. 1 is in contravention of the circular dated 7th July, 2004, the whole purpose of which is to ensure that there should be competitiveness and bidders are not shut out even though there may be some deficiencies for compliance, it will be open to the Department to call for necessary information/clarification/documents from the bidder before processing further with the evaluation of bid within a period of 7 days from opening of packet A and opening of packet B would be suitably differed in such a case.

13. It is the case of the petitioners that inspite of presence of the representative of the petitioner no. 1 at the meeting of 17th February, 2006, they have not been issued with letter of deficiency, irrespective of the fact that it was mandatory on their part to convey the same within a period of seven days as provided under circular dated 7th July 2004.

14. It is the case of the respondent no. 1 that

various technical requirements required to be submitted along with the envelope A relating to prequalification of tender could not be fulfilled by petitioners. It is the case of the respondent no. 1 that the offer of the petitioner no. 1 was conditional as they have varied the description of the goods from the tender specifications by offering to supply goods of different specifications, etc. Out of six tenderers, two have been disqualified as they refused site inspection. One got disqualified due to the fact that the facilities provided by them were not upto the mark.

15. The following respondents were declared successful as their offer was lowest in respect of items shown against their respective names:-

	Name	Item nos.
(a)	Jeel Enterprise.	6, 8 to 11, 15, 17, 18, 23, 28-32, 34, 36, 37.
(b)	Techno Craft	1, 2, 5, 12, 14-17, 19, 22, 23, 25 & 31.
(c)	R.M.M.S.G.S. (Respondent No.4)	3,10,11,18-20, 24 & 33.

16. It is the case of the respondent no. 1 that by not raising any objection or taking any action at the

time of opening of prequalification bid itself, the petitioners have impliedly accepted to go out of the tender process being not qualified for want of compliance with various mandatory requirements.

17. It is the case of the respondent no. 1 that there is delay on the part of the petitioners in approaching this Court. According to the respondent no. 1, the tender was submitted by the petitioners on 16th October, 2006 and the offer was valid for a period of 120 days from the date of its submission and the present writ petition came to be filed on 15th February, 2007 i.e. after the offer period expired, after the finalisation of contract rates, and after the packet B came to be opened on 3rd November, 2006.

18. It is the case of the respondent no. 1 that the petitioners have not submitted the PAN card of the company required under clause 8 and failed to submit latest photographs of directors and power of attorney holders. It is the further case of the respondent no. 1 that the general power of attorney which is mandatory to be registered with the respondent no. 1 Corporation is got registered and executed by only one Managing Director instead of two. It is the further case of the respondent no. 1 that the petitioners have not complied with clause 19 of the special instructions to tenders i.e. in case of joint stock company, the contract must be sealed with seal of company in the presence of and

signed by two directors or by a person duly authorised to sign contract for company by a power of attorney such power being sealed and signed as aforesaid. It is the case of the respondent no. 1 that the petitioners failed to comply with clause 3 (i) i.e. attestation of photo copies/xerox copies of documents from gazetted officer of State / Central Govt. or not below the rank of Admn. Officer of the 1st respondent Corporation before enclosing the same in envelope A. It is the case of the respondent no. 1 that the petitioners failed to comply with certificate of incorporation and change in name is not attested. It is the case of the respondents that entertaining the present petition will amount to relaxing the mandatory conditions of tenders which is contrary to law.

19. Mr. Chirag Balsara, the learned counsel appearing for the petitioners, submitted that the decision taken by the respondent no. 1 in rejecting the bid of the petitioner by not giving the petitioner an opportunity to rectify the deficiencies, if any, which were found in the technical bid which is referred to as Packet A. It is submitted that in all eight tenderers for the aforesaid tender came to be considered by the respondent no. 1 and as required respondent no. 1 held a meeting of the standing committee of the respondent no. 1 on 17th October, 2006 which was attended by petitioner no. 2 and this fact stands duly established by the attendance sheet which shows that the petitioner

no. 2 attended the meeting held on 17th October, 2006 but he was not informed that there was any deficiency in the tender offer submitted by petitioner no. 1.

20. It is the case of the petitioners that it was only on February 14, 2007 that the petitioners for the first time came to know that there was a meeting of the standing committee of the respondent no. 1 held on February 14, 2007 and that the standing committee has not even considered the petitioners bid as it has been informed that the petitioners bid was not responsive and that prior to February 14, 2007 the petitioner at no point of time knew the aforesaid minor technical deficiency in their technical bid. The petitioner has placed reliance on the minutes of the meeting of the standing committee held on 14.2.2007 and particularly item no. 32 where the subject of tender of supply of hospital furniture for Nair Hospital vide case no. CS/22/TDR/PO3 of 2006-07 was taken up for discussion and approval of the standing committee under section 69 (c) as amended of the Mumbai Municipal Corporation Act. It has been pointed out from the minutes of the meeting, which is not disputed by the respondent, and part of the record with respondent no. 1 that the petitioners tender was treated as non-responsive for the only reason that they have not filled page 10 of Article of Agreement as mandatory condition. Mr. Balsara, the learned counsel appearing for the petitioners, has drawn the attention of this Court to a circular u/No.

CE/PD/3076/II dated 7.7.2004 which has been issued by the Municipal Corporation of greater Mumbai and in the said circular it has been clearly provided that if any bidder fails to comply with any of the mandatory conditions or fails to submit mandatory information with the bid it will be open to the department to call for necessary information/ clarification / document from the bidder before proceeding further with the evaluation of the bid within a period of seven days from the date of opening of Packet 'A'. Opening of Packet 'B' will be suitably deferred in such a case. However, no changes whatsoever will be permitted on opening of Packet 'B'. It was, therefore, submitted that in case of the tender, which is the subject matter of the petition, the said circular was duly incorporated in the copy of the specifications and mandatory and other conditions required to be kept in Envelop 'A' issued by the Municipal Corporation of Greater Mumbai, Central Stores Department and Note 2 of the said specifications and mandatory and other conditions which are annexed as Exhibit B-1 along with the petition reproduces exactly the requirements of the circular dated 7.7.2004 and if this is so, then, it was obligatory on the part of the respondent no. 1 to have made the petitioners aware of the deficiencies, if any, in the tender document and ought to have given an opportunity to the petitioners to comply with the same within seven days from the date of due date and even if they are unable to attend the tender opening process on due date, they should direct

their representative to collect the letter of deficiency, if any, within two days of opening date. It is submitted that the bids received from the petitioner no. 1 relating to the tender in question came to be opened on 17th October, 2006 and persons who have responded to the tender were present on 17th October, 2006 and, accordingly, the presence of the representative of the petitioner is also recorded by the respondent no. 1. It is submitted that packet A in respect of the participants came to be opened in the presence of their representatives but nothing was pointed out as regards deficiency, if any, noted in Packet 'A' i.e. the technical bid to enable the participants, particularly the petitioner, to remove the deficiencies, if any, in terms of the circular dated 7.7.2004 and the copy of the specifications and mandatory and other conditions specified in the tender document. Otherwise there was no reason why the petitioners would not have met the deficiencies i.e. non-filling of particulars in page no. 10 of the bid in Packet "A". It is submitted that if this Court examines the said document it will find that though the petitioners have complied with all the requirements, which is not disputed, probably due to inadvertence the petitioners failed to fill in the name of the proprietor/ Managing Partner/ Managing Director/ Holder of the Business and the subsequent paras relating to the declaration which was highly technical in nature. It is submitted that if the application is read as a whole

even such a deficiency cannot be held to be sufficient to reject the tender of the petitioner as non-responsive.

21. Mr. Balsara, the learned counsel for the petitioners, submitted that one of the plea now put forth by the respondent corporation is that on the date of the scrutiny of the tender document, particularly packet "A", came to be placed, the stand taken by the respondent is that the parties were orally informed of the deficiencies and discrepancies, if any, and it was expected of them to have rectified the same. It is submitted that such a plea cannot be sustained in law for the reason that there is no contemporaneous record to show that such an exercise was undertaken while the bids were scrutinised. Otherwise there was no reason why the petitioners would not have rectified such a minor deficiency. Secondly it is submitted that the respondent now cannot take advantage of the same by raising a plea of delay and laches in approaching this Court on the basis that the offer was effective only for 120 days. It is submitted that the petitioner has made a categorical statement that it is only when the matter was taken up by the standing committee for its consideration that the petitioner learnt that their tender has been rejected solely on the ground that their tender is treated as non-responsive as they have not filled page 10 of the copy of the specifications and mandatory and other conditions as per the tender

condition and, therefore, the impugned decision of the respondent no. 1 to treat the petitioners tender as non-responsive deserves to be quashed and set aside and the respondent no. 1 should be directed to consider the price bid i.e. Packet "B" of the petitioner.

22. Mr. Balsara, the learned counsel for the petitioners, has also expressed that how the respondent no. 1 can come up with the plea that the petitioner has come for redressal before this Court after Packet 'B' consisting Price List by each Bidder is opened on 30.11.2006 and after the Corporation has sanctioned the same and that the petitioner after being aware of the price quoted by other bidders has offered that they are ready to supply at the lowest price which cannot be accepted. It is submitted that the contention of the petitioner that his quotation in so far as the price bid is concerned that the Packet "B" was submitted along with Packet "A" and whatever he has offered will be required to be taken into consideration to decide whether the petitioner's bid is lowest or not. It is submitted that the petitioner is the model employer of repute and is lowest on various counts compared to the price bid of respondent nos. 3 to 5 and in case the petitioner is not permitted to participate in the bid, it would cause loss to the Municipal Corporation as there is a difference of 24.63% between the petitioners offer and the recommended price at which the contract is sought to be awarded by respondent no. 1 in respect of

the said 28 items and, therefore, it will also be not proper in the interest of public at large and particularly the respondent no. 1 to ignore the petitioners bid which calls for intervention by this Court. In support of his contention, Mr. Balsara placed reliance on the decision of the US Supreme Court in the case of **Vitarelli v. Seaton, 359 U.S. 535 (1959)** which has been followed by our Court and one such decision which is cited before us, as an authority on the subject, is the one rendered by the Supreme Court in the case of **Dr. Amarjit Singh Ahluwalia, v. The State of Punjab and others, reported in AIR 1975 SC 984**, wherein the question of interpretation of clause 2(ii) of the Government memorandum dated 25.10.1965 fell for consideration of the Supreme Court and the Supreme Court while dealing with the said memorandum dated 25.10.1965 observed that the said memorandum was in the nature of administrative instruction, not having the force of law, but the State Government could not at its own sweet will depart from it without rational justification and fix an artificial date for commencing the length of continuous service in the case of some individual officers only for the purpose of giving them seniority in contravention of that clause. That would be clearly violative of Articles 14 and 16 of the Constitution. The sweep of Articles 14 and 16 is wide and pervasive. By relying on this proposition, Mr. Balsara canvassed before us that arbitrariness should be eliminated of such type and as the respondent no. 1 has failed to process the bids in

accordance with their own circular which has been the practice scrupulously followed in the past, there was no reason for the respondent no. 1 to have departed from such a practice as it is depriving the petitioner to participate in the bid or treating his bid as non-responsive. The other decisions on which the petitioner has placed reliance relates to the case of **Ramana Dayaram Shetty v. The International Airport Authority of India and others, reported in AIR 1979 SC 1628** and **Tata Cellular v. Union of India, reported in AIR 1996 SC 11**, which coincidentally has also been relied upon by the respondent no. 1 in support of their defence. Therefore, it is the contention of Mr. Balsara, the learned counsel for the petitioners, that this is a fit case where this Court should intervene in the larger public interest as the decision of the respondent no. 1 in treating the tender of the petitioner as non-responsive is illegal, irrational and suffers from procedural impropriety. Mr. Balsara submits that he need not address this Court on its limitation while exercising its extra-ordinary power of judicial review under Articles 226 and 227 of the Constitution which now stands almost settled by catena of judgments.

23. Mr. Singhavi, the learned Senior Advocate, appearing for respondent no. 1, submitted that there are no allegations made by the petitioners of the fact that the conduct of the respondent in not accepting the

tender of the petitioner as non-responsive for the deficiency, where they did not met the mandatory requirement, by no stretch of imagination, can be said to be vitiated by arbitrariness, unfairness, illegality, irrationality or Wednesbury unreasonableness. Mr. Singhavi, the learned Senior Advocate appearing for respondent no. 1, reiterated before us the well known principle that this Court while exercising its power of judicial review can only examine the decision making process and not the merits of the decision itself to find out whether the same is in consonance with Articles 14 and 16 of the Constitution of India. Mr. Singhvi has reiterated the principles laid down in the case of **Tata Cellular vs. Union of India reported in (1994) 6 SCC 651**. Though the test is whether wrong is of such a nature as to require intervention and that the Court can only set right the decision making process but it cannot substitute its own decision for that of the respondent as judicial review is concerned with reviewing not the merits of the decision in support of which the application for judicial review is made, but the decision making process itself. It is thus different from an appeal. When hearing an appeal, the Court is concerned with the merits of the decision under appeal. Since the power of judicial review is not an appeal from the decision, the Court cannot substitute its own decision. Apart from the fact that the Court is hardly equipped to do so, it would not be desirable either. Where the selection or rejection is arbitrary, certainly

the Court would interfere. It is not the function of a judge to act as a superboard, or with the zeal of a pedantic schoolmaster substituting its judgement for that of the administrator.

24. Mr. Singhvi, the learned Senior Advocate, appearing for the respondent no. 1, submitted that the para meters on which the Court can examine the case as set out in Tata Cellular's case are -

1. Whether a decision-making authority exceeded its powers?
2. committed an error of law,
3. committed a breach of the rules of natural justice,
4. reached a decision which no reasonable tribunal would have reached or,
5. abused its powers.

Mr. Singhvi, the learned Senior Advocate, submitted that the respondent no. 1 has not committed any breach of the terms and conditions of the tender so as to call for judicial intervention. It is submitted that as a tender is an offer, it is something which invites and is communicated to notify acceptance. Broadly stated, the following are the requisites of a valid tender :

1. It must be unconditional.

2. Must be made at the proper place.
3. Must conform to the terms of obligation.
4. Must be made at the proper time.
5. Must be made in the proper form.
6. The person by whom the tender is made must be able and willing to perform his obligations.
7. There must be reasonable opportunity for inspection.
8. Tender must be made to the proper person.
9. It must be of full amount.

Mr. Singhvi, the learned Senior advocate appearing for the respondent no. 1, therefore, submitted that in the present case the petitioners' tender has been found to be non-responsive for the reason that it did not conform to the terms of obligations and was not made in the proper format and this is obvious from the fact that the deficiencies which are noted at page 10 of the application in Packet "A" speaks for itself. Mr. Singhvi, the learned Senior Advocate, submitted that it is too much to expect the State or a statutory authority to make the aspirants sit by their side and to tell how to fill and attest the form. It is submitted that if the deficiencies pointed out in the application are of mandatory nature and does not conform to the requirements, the same cannot be rectified, as the bid document will have to be held invalid.

25 In so far as the contention of the petitioner that the respondent no. 1 ought to have adhered to the circular dated 7.7.2004 which has been issued regarding mandatory condition and condition regarding documents which is submitted in Packet "A" and Packet "B" for various bids to be invited by the Corporation merely act as guide-lines which do not in any manner attach an obligation on the part of the respondent no. 1 to bring to the notice of the participants the deficiencies particularly which are of mandatory nature. It is submitted that the circular has been misconstrued by the learned counsel for the petitioners as obligatory on the part of the respondent no. 1 to call for necessary information/ clarification/ document from the bidder before proceeding further with the sanction of the bid. It is submitted that this is to be done in a case where the respondent no. 1 wants to call for necessary information / clarification / document from the bidder for its satisfaction that the bidder / participant meets all the requirements of the tender notice and in the present case, the respondent no. 1 on floating of the tender in the presence of the representatives of all the tenderers had orally informed the representative of the petitioner about the lacuna in the tender document which made it non-responsive and as the petitioner simply signed the blank form without filling material particulars regarding undertaking

mandatorily required, there has been no fault on the part of the respondent no. 1 in declaring their tender as non-responsive in the presence of the petitioner's representative who fully knew why the petitioner's tender was declared non-responsive. Mr. Singhvi has pointed out that in the case of the petitioner not only that he was declared as non-responsive for non-giving the name of the proprietor/managing partner/managing director/ holder of the business but their bid was also declared non-responsive as they failed to rectify the deficiencies after they were orally informed to do so which is another mandatory requirement as per the tender document and according to Mr. Singhvi, the foot note to mandatory condition clarifies that it will be open for the Department to call for necessary information / clarification / document. Hence it is discretionary for the Administration to give such opportunity to any bidder. It is submitted that in the case of the petitioner there has been deficiency as they have failed to fill in and affix the signature on the printed undertaking addressed to the Municipal Commissioner and they were expected to fill the necessary details about their status with their signature on it and, therefore, according to Mr. Singhvi, as the petitioner has failed to fulfil the mandatory conditions their tender was declared as non-responsive as required by condition no. 19 of Article of Agreement and, therefore, as the petitioners offer has been non-responsive and invalid, there was no

question of contract being awarded to the petitioner. Mr. Singhvi submitted that in so far as the successful bidders are concerned who are respondent nos. 3 to 5 before this Court, the Corporation has accepted their bids as they have complied with all the terms and conditions and the matter has been processed further and that the Court should not interfere in the matter at such a belated stage and that the petition deserves to be rejected on the ground of delay and laches.

26. Mr. Shyam Dewani, the learned counsel appearing for the successful bidders, submitted that on award of the contract the successful bidders i.e. the respondents 3 to 5 have already made substantial investment and, therefore, even on principle of equity no intervention of this Court at such a belated stage is called for. It is submitted that in the case of **Directorate of Education and others vs. Educomp Datamatics Ltd., and others, reported in AIR 2004 SC 1962**, the matter being related to policy decision the scope of judicial review is quite limited as held in the said case wherein it was observed by the Supreme Court as under :-

> " The terms of the invitation to tender are not open to judicial scrutiny the same being in the realm of contract. The Govt. must have a free hand in setting the terms of the tender. It must have reasonable play in its

joints as a necessary concomitant for an administrative body in an administrative sphere. The Courts would interfere with the administrative policy decision only if it is arbitrary, discriminatory, malafide or actuated by bias. It is entitled to pragmatic adjustments which may be called for by the particular circumstances. The Courts cannot strike down the terms of the tender prescribed by the Govt. because it feels that some other terms in the tender would have been fair, wiser or logical. The Courts can interfere only if the policy decision is arbitrary, discriminatory or mala fide."

Mr. Dewani in support of his case has placed reliance on the decisions in the case of **(i) M/s. Monarch Infrastructure vs. Commissioner U.M.C., reported in AIR 2000 SC 2272, (ii), Ramana Shetty vs. The International Airport Authority, reported in AIR 1979 SC 1628, (iii), M/s. G.J. Fernandez, vs. State of Karnataka, (iv), Asia Foundation & Construction vs. Trafalgar House Construction, reported in (1997) 1 SCC 738, (v) Kanchi Fleet Movers vs. Collector of Solapur, reported in 1998 (4) Bom. C.R. 268, (vi) Ghan Shyam Das Gupta vs. Anant Kumar Sinha, reported in AIR 1991 SC 2251 and (vii) S.A. Khan vs. State of Haryana, reported in AIR 1993 SC 1152** and submitted that the

petition deserves to be dismissed.

27. In so far as the principles culled out from the various authorities cited before this Court by the learned counsel for the parties are concerned, it is fairly conceded that there can be no quarrel over the issue as to in what cases the court can intervene in a tender process in exercise of its power of judicial review. We also do not propose to reiterate the law on the subject as it is well settled by catena of decisions but our attention is particularly drawn to the decision rendered by the Supreme Court in the case of **Tata Cellular vs. Union of India, reported in 1996 SC 11** wherein the three Judge Bench of the Supreme Court has dealt with various facets of the issues which normally arise in such a case.

28. We are in total agreement with Mr. Singhavi, the learned Senior Advocate appearing for respondent nos. 1, and Mr. Dewani the learned counsel for the successful bidders that permitting the bidder to correct errors in the bid document which are not merely clerical and mechanical when such corrections are not permissible under the rules governing the process of tender, leave aside mandatory requirements, and that it is not within the scope of judicial review so as to permit intervention of this Court in the administrative decision taken by the respondent no. 1 in rejecting the offer of the petitioner as

non-responsive. Let us proceed to examine as to whether in the peculiar facts and circumstances of the case, any intervention of this Court is required in the matter. In the decision rendered by the Supreme Court in the case of **Bhavnagar University vs. Palitana Sugar Mill (P) Ltd., and others, reported in (2003) 2 SCC 111,** the Supreme Court has held as under :-

> . "It is the basic principle of construction of statute that the same should be read as a whole, then chapter by chapter, section by section and word by word. Recourse to construction or interpretation of statute is necessary when there is ambiguity, obscurity, or inconsistency therein and not otherwise. An effort must be made to give effect to all parts of the statute and unless absolutely necessary, no part thereof shall be rendered surplusage or redundant. True meaning of a provision of law has to be determined on the basis of what it provides by its clear language, with due regard to the scheme of law. Scope of the legislation on the intention of the legislature cannot be enlarged when the language of the provision is plain and unambiguous. In other words, statutory enactments must ordinarily be construed according to their plain meaning and no

words shall be added, altered or modified unless it is plainly necessary to do so to prevent a provision from being unintelligible, absurd, unreasonable, unworkable or totally irreconcilable with the rest of the statute. It is also well settled that a beneficent provision of legislation must be liberally construed so as to fulfil the statutory purpose and not to frustrate it."

. "When a statutory authority is required to do a thing in a particular manner, the same must be done in that manner or not at all. The State and other authorities while acting under the statute are only creature of statute. They must act within the four corners thereof."

. "When a public functionary is required to do a certain thing within a specified time, the same is ordinarily directory but it is equally well settled that when consequence for inaction on the part of the statutory authorities within such specified time is expressly provided, it must be held to be imperative."

Another well known principle which is normally brought

into service while exercising power of judicial review is what has been reiterated by the Supreme Court in the case of **State of Uttar Pradesh vs. Singhara Singh and others, reported in AIR 1964 SC 358** where the Supreme Court quoted with approval the decision in Taylor v. Taylor for the proposition that where power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that the other methods of performance are necessarily forbidden.

29. In the present case, it is not as if the details or information which was sought for by the BMC from the Petitioners is not available on record. Our attention is invited to the Annexures to the Writ Petition including the covering letter accompanying the bid/tender submitted by the Petitioners. From a perusal of this letter and other Annexures, it is apparent that all details pertaining to the First Petitioner Company and its Directors so also other relevant particulars were duly furnished. The requirement that all details relevant to the tender being made available is thus fulfilled. Assuming, that the particulars to which our attention has been invited by Shri Singhvi are not filled in by the Petitioners in the Form stipulated for the Tender, it is not as if that they are unavailable or are incapable of being supplied. We are sure that if the attention of the Representative of the Petitioner had been invited to this aspect, he would have furnished the details so

also replied to the relevant queries in that behalf within the time prescribed in the Circular. Hence, we are unable to accept the submission of Shri Singhvi that the tender/bid submitted by the Petitioners is in any way incomplete or can be termed as invalid. Requisite details in a form of tender not being filled in, is something which is capable of being rectified assuming that those details are necessary and material pre-requisites for consideration of the bid.

30. The B.M.C. modified its Circular with some intent and purpose. Now, a deficient bid is not to be rejected outright. The words to this effect appearing earlier now stand deleted and are substituted by the above. In such circumstances, the B.M.C. could not have ignored this deletion and acted contrary to its own Circulars. Once the Circulars are framed with a specific object and purpose, the actions of the B.M.C. have to be in consonance with the same.

31. The core issue which is required to be addressed in this case is as to whether the respondent no. 1 has acted fairly while processing the bids of the parties before it. The respondent no. 1 as a matter of policy had issued a circular dated 7.7.2004 which incorporates certain guide-lines for scrutinizing the bids while awarding contracts by the respondent no. 1. The said circular reads as under :-

"A Circular U/No. CE/PD/3078/11, dt. 7-7-2004 was issued regarding Mandatory conditions and conditions regarding documents to be stipulated in Packet "A" & Packet "B" for the various bids to be invited by the Corporation. It is observed that as a result of the mandatory conditions stipulated, in many cases bids of even highly reputed companies are required to be rejected. This is restricting the competitiveness amongst the bidders and as a result of which the Corporation is losing financially as well. The aim of any procurement policy of a public body should be to ensure transparency, improve competitioners and ensure quality. In pursuance of this policy, this circular is issued.

Vide this circular the bids are invited in two packets i.e. Packet "A" & "B". The bidders are required to submit various information Packet "A" & Packet "B" comprises only the financial offer. It is, therefore, felt that the bidders can be allowed to submit necessary information / clarification / document even on opening of Packet "A" but in any case within 7 days from the date of opening of Packet "A". The

following changes are, therefore, made in this above referred circular.

1) The word "out right" shall be deleted from the first sentence appearing immediately below the paragraph pertaining to the mandatory conditions which reads as "the tender shall be rejected outright if the tenderer",

2) A new paragraph which reads as follows shall be added after III "D" of the above referred circular.

. If any bidder fails to comply with any of the above mandatory conditions or fails to submit relevant information with the bid, it will be open to the department to call for necessary information/clarification/document from the bidder before proceeding further with the evaluation of the bid within a period of seven days from the date of opening of Packet "A". Opening of Packet "B" will be suitably deferred in such a case. However, no changes whatsoever will be permitted in opening of Packet "B".

. Condition "J" of mandatory conditions stands

amended as follows -

Condition "J" : Does not submit in Packet "A" certified copies of the "PAN", documents and photographs of the individuals, owners, Karta of Hindu undivided family, firms, private limited companies, registered co-operative societies, partners of the partnership firms and at least two Directors if number of Directors are more than two in case of private limited companies. However, in case of public limited companies, semi government undertakings, government undertakings, no "PAN" documents will be insisted.

. The documents can be certified by the Gazetted Officer OR officers not below the rank of Assistant Engineers/Adminsitrative Officers of M.C.G..M. OR practicing Notory approved by the Govt. of Maharahstra or Govt. of India with his stamp with or without a red seal clearly stating his name and registration number.

. In all cases where bids are already invited, the scrutiny of the bids shall be done in accordance with the changes proposed above notwithstanding the mandatory condition that bids shall be rejected outright on failure of

the bidder to submit requisite information/clarification/document.

. This circular will come in effect immediately."

In the light of the proposition relating to interpretation of statutes as laid down in the decision of Bhavnagar University's case and the methodology to be adopted in complying with the procedure while taking administrative decision, as in the present case, scrutinizing of tender bid reiterated in State of Uttar Pradesh vs. Singhara Singh and others (supra), applying these tests, we find that the Respondent No. 1 has not adhered to the procedure which vitiates the decision making process, and does amount to procedural impropriety.

32. It is not in dispute that the tender form inviting the bid and particularly Packet "A" Note No. 2 which incorporates the said circular and the Note which is below the tender form containing the copy of the specifications and mandatory and other conditions clearly states that all the above mandatory conditions should be strictly adhered to failing which the tender will be treated as non-responsive and no correspondence will be entertained in the matter. It further clarifies :-

NOTE:

ALL THE ABOVE MANDATORY CONDITIONS SHOULD BE STRICTLY ADHERED TO FAILING WHICH THE TENDER WILL BE TREATED AS NON-RESPONSIVE AND NO CORRESPONDENCE WILL BE ENTERTAINED IN THE MATTER.

Tenderer’s pertinent attention is being drawn to additional special instructions to the tenderers as follows :

1) Clause No. 5(A) for "Penalty for inferior supply from defaulting contractors/suppliers"

2) If any bidder fails to comply with any of the above mandatory conditions or fails to submit relevant information with the bid, it will be open to the department to call for necessary information/clarification/document from the bidder before proceeding further with the evaluation of the bid within a period of seven days from the date of opening of Packet ’A’. Opening of Packet ’B’ will be suitably deferred in such a case. However, no changes whatsoever will be permitted on opening of Packet ’B’.

<u>Tenderers are requested to remain present on</u>

> the due date of opening of packet 'A' to witness the tender opening process and to collect the letter regarding deficiencies, if any, in the tender document and to comply with the same within 7 days from the date of due date if they are unable to attend the tender opening process on due date, they should direct their representative to collect the letter of deficiencies, if any, within 2 days of due date. They are also requested to remain present at the time of opening of packet 'B' which will be displayed on Notice board of this office."
>
> (emphasis supplied).

Therefore, it is quite evident and clear from the circular dated 6.6.2004 and the note below the copy of specifications and mandatory and other conditions which were required to be kept in envelope "A" that the tenderers were requested to remain present on the due date of opening of packet 'A' to witness the tender opening process and to collect letter regarding deficiencies, if any, in the tender document and to comply with the same within 7 days from the date of due date if they are unable to attend the tender opening process on due date, they should direct their representative to collect the letter of deficiencies, if any, within 2 days of due date of notice. They are also requested to remain present at the time of opening

of packet 'B' which will be displayed on Notice Board of this office. The respondent no. 1 has not denied that this procedure was required to be followed while scrutinizing the bids received by them in response to the notice inviting tenders. Not only this by way of record even an attendance sheet was produced of 17.10.2006 which is Exhibit B-3 and from the attendance sheet it is clear that representative of the petitioner was duly present and has also signed the attendance sheet at serial no. 6 to mark his presence. It is the case of the respondent no. 1 that on scrutiny made on 17.10.2006 the deficiency for which the petitioners tender has been rejected as non-responsive were noticed and orally pointed out to the representative of the petitioner but not in writing. As in the affidavit in reply filed by respondent no. 1 particularly para 10 (c) it has been specifically stated that on the due date packet "A" of the said document was opened by this respondent on 17.10.2006 in the presence of the representative of the tenderers/ contenders and accordingly, after opening of packet "A" in the presence of the representative of the tenderers the responsive and non-responsive tenderers were declared by this respondent. Upon declaring the non-responsive tenderers, in all 8 tenderers were orally informed about lacuna in the tender document made non-responsive and since the petitioner simply signed the blank form without fulfilling mandatory requirements, their tender was declared non-responsive in the presence of the

petitioner's representative who fully knew that the petitioners offer was declared non-responsive. We have no hesitation to arrive at a conclusion that such an explanation offered by the respondent no. 1 in their affidavit in reply is an afterthought as admittedly the respondent no. 1 has no contemporaneous record to support their contention as aforesaid and, therefore, we have no hesitation to accept the contention of the petitioners that on the date when Packet "A" was opened except for recording the attendance of the representatives of the bidders, no other formalities as required under the circular and the note appended to the copy of specifications and mandatory and other conditions to be kept in envelop "A" was followed. The circular and the note clearly mandates that on scrutiny of the packet "A" it was obligatory on the part of the respondent Corporation to issue a letter to the tenderer or his representative regarding deficiencies, if any, in the tender document and to give him 7 days time from the date of due date to rectify the deficiencies, if any, as specified in the letter. Therefore, we have no hesitation to accept the case of the petitioners that it is only when in the meeting of the standing committee held on 14.2.2007 when this subject of supply of hospital furniture to Nair Hospital vide case No. CS/22/TDR/PO3 of 2006-07 was taken up at item no. 32 for discussion and approval, for the first time the petitioners tender form was treated as non-responsive for the reason that they have

not filled page no. 10 of articles of material as per the mandatory condition. There can be no doubt in one's mind that the deficiency was relating to mandatory conditions but it was of such a nature as could have been easily rectified if it was pointed out to the petitioner while packets "A" of the bids were actually scrutinized on 17.10.2006. But for this deficiency it is not the case of the respondent no. 1 that there was any other deficiency in the bid packet "A" to classify it as non-responsive. We, therefore, have no hesitation that the standing committee of respondent no. 1's decision stood vitiated for non-compliance of their obligation to communicate the bidder the deficiency in packet 'A' on scrutiny which has vitiated the whole process of awarding the contract and it violates Article 14 of the Constitution. As the decision making process itself was in violation of their own circular and process as contained in the Note annexed to the copy of specification of mandatory and other conditions to be kept in envelope "A". This, in our opinion, goes to the root of the matter.

33. In so far as the contention of the respondent that the petition should not have been entertained because of delay and laches is concerned, we find that the respondent no. 1 having failed to adhere to the decision making process by following the circular governing the field and was part of the requirement to be fulfilled i.e. on scrutiny if they found that there

was some deficiency even relating to mandatory condition or for want of relevant information of the bid, they ought to have communicated it to the petitioners in writing as it contemplates communication by letter regarding deficiency, if any, in the tender document and to give an opportunity to the petitioners to comply with the same within 7 days from the date of due date which has not been scrupulously followed and, therefore, the delay cannot be attributed to the petitioners who have immediately approached this Court within reasonable time on coming to know of the decision of the standing committee in rejecting their tender as non-responsive. Therefore, we quash the decision of the respondent no. 2 that the petitioners bid was found to be non-responsive on account of their not having signed the tender document and direct the respondents to consider the 1st petitioner’s offer bid for supply of hospital equipments by giving them 7 days time to remove the deficiencies which should be communicated by a letter (in writing) and on petitioners complying with the same proceed to open Packet "B" and in the event the same is found to be lowest and meets all the requirements of the price bid contained in Packet "B" as compared to respondent nos. 3, 4 and 5 petitioners offer be taken into consideration by respondent no. 1 for awarding the contract.

34. Petition is allowed in the aforesaid terms.

Rule is made absolute accordingly. No order as to costs.

ACTING CHIEF JUSTICE.

S.C. DHARMADHIKARI J.